IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 178 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANJUBHAI ANANDRAO KHANPIKAR

Versus

MANUBHAI KHODABHAI PATEL

Appearance:

1. Appeal from Order No. 178 of 2002

MR MUKESH R SHAH for Petitioner No. 1

MR PR THAKKAR for Respondent No. 1-9

MR MB GANDHI for Respondent No. 10-33

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 21/03/2003

ORAL JUDGEMENT

This appeal under Order 43, Rule 1(r) of the CPC is directed against the judgement and order dated

15.3.2002 passed by the Third Joint Civil Judge (S.D.), Baroda, below the application for temporary injunction (Ex.5) in Special Civil Suit No. 897 of 2001, whereby the learned Judge dismissed the said application and vacated the ex-parte ad-interim relief granted on 23.10.2001.

2. The appellant has filed the said Suit for specific performance of the Banakhat dated 27.11.1998, in respect of Survey Nos. 187 and 188, situated in village Tharsali, Tal. Baroda. According to the appellant, the Banakhat had been executed by defendant No.1. Defendant No.2 was his mother, defendants Nos. 3 to 5 were his brothers and defendants Nos. 6 and 7 were his sisters. Defendant No.8 was Power of Attorney holder of defendants Nos. 1 to 7.

3. Defendant No.9 was a Partner of Maruti Enterprise, a partnership firm in whose favour the defendants Nos. 1 to 7 had executed several registered agreements and documents. Defendants Nos. 1 to 9 had also executed various sale-deeds on 1.9.1999 in favour of defendants Nos. 10 to 33. The appellant also prayed that the said sale-deeds may be cancelled.

4. The appellant made an application for temporary injunction and the learned trial Judge granted an ex-parte order restraining defendants from transferring lands on 23.10.2001.

5. The defendants filed their replies to the application and produced all the documents tracing the previous litigation which had taken place with respect to suit lands.

6. After hearing all the parties, the learned trial Judge dismissed the said application by a detailed order running into 30 pages.

7. The appellant has therefore filed this appeal challenging the said order.

8. Now, it appears that the appellant had also previously filed another Suit (Special Civil Suit No. 106/2001) against the defendants Nos. 1 to 7, in respect of the same lands, relying on the same Banakhat dated 27.11.1998 in his favour and had prayed for temporary injunction. However, the said application was dismissed on merits on 1.10.2001. One of the grounds for dismissal was that defendants Nos. 1 to 7 had already transferred a number of plots in Survey No. 187. However, the

learned Judge had also considered other factors and he had specifically observed in his order that the plaintiff's Banakhat was not registered and the other Banakhat which had been executed by the defendants in favour of other persons was a registered Banakhat and prior in point of time and weightage should be given to the registered document. The appellant did not file any appeal challenging the said order. However, he filed the present Suit for specific performance and joined the transferees as parties.

9. The learned Counsel for the appellant submitted that the previous suit was only for declaration and injunction and the present Suit which is for specific performance is not barred by the principles of resjudicata, and he relied on the decision of this Court in Nitinkumar Laxmidas & ors. V. Smt. Savitaben Pranshanker & ors., reported in XXXVII (1) GLR 560. He also contended that document dated 13.8.1998 did not reflect any concluded contract in favour of defendant No.9. However, the fact remains that the appellant had failed in his attempt to obtain temporary relief in the previous Suit, relying on the same Banakhat which is the basis of the present suit for specific performance. Moreover, the learned Judge after considering various factors and the materials on record and submissions advanced before him, has recorded the findings that the plaintiff has no prima-facie case; that the balance of convenience is in favour of the defendants and that irreparable loss will be caused to the defendants if the injunction is granted. The learned Counsel for the appellant endeavoured to show that the findings were erroneous.

10. However, the trial Judge has considered all the relevant facts governing the grant or refusal of temporary injunction in such cases. It is not shown that the learned trial Judge has exercised his discretion arbitrarily, or capriciously or perversely or that he has ignored the settled principles of law regulating grant or refusal of interlocutory injunction. The conclusion reached by the trial Court is reasonably possible on the material and hence, the appellate Court cannot reassess the material and seek to reach a conclusion different from the one reached by the trial Court. The Appellate Court will not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. In my opinion, the trial Court has exercised the discretion reasonably and in a judicial manner and, in such a case,

the fact that the Appellate Court would have taken a different view, would not justify interference with the trial Court's exercise of discretion. Thus, there is no ground for interfering with the impugned order. The appeal is therefore dismissed.

(M. C. Patel, J.)

*/Mohandas